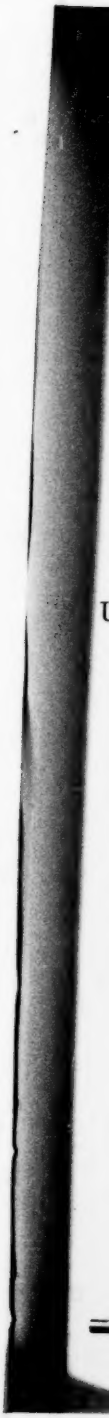

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HAROLD B. WILLEY

IN THE

Supreme Court of the United States

October Term, 1953

No. 188

ITED CONSTRUCTION WORKERS, affiliated with the UNITED MINE WORKERS OF AMERICA; DISTRICT 50, UNITED MINE WORKERS OF AMERICA, and UNITED MINE WORKERS OF AMERICA, *Petitioners*

v.

LABURNUM CONSTRUCTION CORPORATION

PETITIONERS' REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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WILLARD P. OWENS,
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TABLE OF CASES.

STATUTES.

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PETITIONERS' REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

I.

Laburnum's use of such words as "brute force"[1] and "violence"[2] and "violent coercion"[3] is unwarranted. Laburnum's evidence (R. 803-804) admits that no employee was hurt, no property destroyed, no automobile overturned and no one mauled. The Supreme Court of Appeals of Virginia, in its opinion under the heading "Liability of the Defendants" (R. 1950-1958), made no finding of violence, but agreed that "because of the insolent and abusive lan-

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1 Brief, p. 4, under heading "STATEMENT".
2 Brief, p. 4, under heading "QUESTION PRESENTED".
3 Brief, p. 6, under heading "ARGUMENT".

guage and threats of Hart and those accompanying him, the Laburnum employees, who were greatly outnumbered, were intimidated and afraid to proceed with their work" and that the "employees refused to resume their work because of the threats and conduct of Hart and his associates." (R. 1955)

II.

The thesis of Laburnum's brief is that the Congressional grant of *exclusive* jurisdiction to N.L.R.B. under the Labor Management Relations Act, 1947, is restricted to *peaceful* labor activities. Such thesis, petitioners submit, is fallacious as to the instant case. While in *International Union* v. *O'Brien*, 339 U.S. 454, 457 (1950), this Court declared that the Act did not permit State regulation of "peaceful strikes for higher wages", the textual use of the term "peaceful" merely denotes a factual situation and not, as Laburnum urges, a limitation upon the federal Board's exclusive authority. Rather, the *O'Brien* case juridically determined the supremacy of the Federal Act over State law.

Nor does *International Union* v. *Wisconsin Employment Relations Board*, 336 U.S. 245, sustain Laburnum's contention. The Court's holding therein is bottomed upon its conclusion that the Act does not forbid the conduct involved in that case. In salient language, which Laburnum significantly omitted in quoting from the case (Brief pp. 4-5), the Court stated:

> *"Nevertheless, the conduct here described is not forbidden by this Act and no proceeding is authorized by which the Federal Board may deal with it in any manner."* (Emphasis supplied)

Further emphasizing the rationale of that case, the Court declared (p. 254):

> *" . . . the Federal Board has no authority either to investigate, approve or forbid the union conduct in ques-*

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tion. This conduct is governable by the State or it is entirely ungoverned.'' (Emphasis supplied)[4]

N.L.R.B. v. *International Rice Milling Co.*, 341 U.S. 665, was not concerned with the issue of the conflict of federal-state jurisdiction, and the Court's suggestion therein (p. 672; Laburnum Brief p. 5) that a complaint concerning violence ''would have addressed itself to local authorities'' unquestionably referred to a prosecution by a sovereign state for an offense against the public and not to the instant situation where an employer sought and obtained a money judgment based upon acts which a state court jury has found to have been committed and which are unfair labor practices under Section 8 (b)(1)(A) of the Act.

Contrary to Laburnum's position that the Board's exclusive jurisdiction is limited to peaceful activities, the test employed by state courts,[5] federal courts[6] and NLRB,[7] in

[4] Of the cases cited by Laburnum (Brief, pp. 5-7): *Allen Bradley Local* v. *Wisconsin Employment Relations Board*, 315 U.S. 740 (1942), antedates enactment of the Act regulation union conduct. In *Art Steel Co.* v. *Velazquez*, 280 App. Div. 76, 111 N.Y.S. 2d 198, in approving State Court jurisdiction, the Court observed (p. 201) that ''The Taft-Hartley Law contains no reference to violence as a ground for action by the National Labor Relations Board.'' Furthermore, it directed (p. 202) that ''steps should be taken to ascertain whether the National Labor Relations Board desires to act with the respect'' to the basic dispute involved. In *Grist* v. *Textile Workers Union*, —— R. I. ——, 82 A. 2d 402 (1951), there was no issue of the conflict of federal and state jurisdiction.

[5] Cases are cited in the petition filed herein (pp. 20-21). Illustrative: ''The actions . . . constitute unfair labor practices under the Act. The Plaintiff's remedy, therefore, lies within the exclusive jurisdiction of the'' NLRB. *McNish* v. *American Brass Co.* Conn. , 89 A. 2d 566 [1952; cert. denied, 97 L. ed. (Adv. op., p. 247)].

[6] Illustrative: Where an employer charged that a labor union's picketing ''seeks to coerce the employees . . . to become'' union members, which was violative of Section 8(b)(1)(A) of the Act and illegal under Maine law, the federal district court rejected the applicability of state law ''because all of the activities alleged . . . to be illegal are within . . . union unfair labor practices provisions of the Taft-Hartley Act''. *Pocahontas Terminal Corp.* v. *Portland Bldg., etc. Council*, 93 F. Supp. 217. (USDC, D. Maine). See also federal court cases cited in the petition filed herein, pp. 21-22.

[7] In *H. N. Thayer Company*, 30 LRRM 1184, 1185 the NLRB stated in part:

'' . . . [the] Board was given regulatory power over the area of *non-peaceful* means employed in labor controversies . . .

''Plainly the Board is not bound by a decision as to the objectives of the strike which the state court had no power to make. Nor is it bound by that court's ruling *respecting the character of the means.* The Act vests the Board with 'exclusive primary jurisdiction over all phases of the administration of the Act' . . .'' (Emphasis supplied) In the *Thayer* case (cited in petition, p. 23), the Board found that Section 8(b)(1)(A) of the Act was violated by a union through its agent's conduct of kicking two nonstrikers.

declaring that the federal Act supersedes state law, is whether the challenged action is prohibited conduct within the ambit of activity declared by the Act to be an unfair labor practice.

Furthermore, all of the cases cited by Laburnum in support of its assertion that "State law may provide a remedy when violent coercion is employed", except *Russell* v. *United Auto Workers*, 64 So. 2d. 384 (Ala. 1953), are instances where state courts have awarded injunctive relief, as distinguished from the instant case where an award of damages is involved. The *Russell* case alone involved a common law tort action. The Alabama court gave no consideration to the fact that the Act specifies the instances in which damage actions may be brought for violations of the Act and the courts in which such actions are to be prosecuted (see Petition, p. 27); and that court, noting there is "no authoritative holding from the Supreme Court on the matter now before us", also observed that it "would prefer that the Supreme Court of the United States express its judgment on the question before committing the Supreme Court of Alabama to a profound change in law . . ."

Conclusion

The petition should be granted.

Respectfully submitted,

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October 1, 1953.

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